

# THE SUPREME COURT BELONGS TO EVERYONE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

I had been quietly watching the Supreme Court's latest crisis play out despite young lawyers and law students asking me to speak up. Watching because I did not want any premature adjudication to hurt the prestige of the court that I so dearly love. Each time I climb its massive stairs, I am reminded of a client who used to bend down and touch the top stair, as an act of worship and devotion, whenever he had a hearing due.

I have seen people go away happy from here, I have seen them go shattered, but I never had reason to doubt the institution as a fair arbiter. I never doubted the institution's fairness, because proceedings were always conducted in courts open to all parties, where trained lawyers presented their sides of the cause. Despite aberrations, most judges here are determined to fully hear whatever relevant submissions parties to the cause have to offer. All these requirements of procedural fairness seem to have been suspended in *l'affaire* Chief Justice of India (CJI).

I am agnostic on the question of whether there was an act or two on the part of the CJI or by the woman who complained against him. It may boil down to a 'he said, she said' situation, where the standard of proof beyond reasonable doubt cannot be met. An impartial arbiter might rightly conclude that the presumption of innocence requires the benefit of the doubt to be given to the accused. But he or she must arrive at this conclusion only after an open and fair inquiry. The inquiry in this case, which has now concluded, did not meet the open and fair standard. And so I feel compelled to speak.

The complainant had walked out of the inquiry saying that she "found the atmosphere of the committee very frightening". She said, "I was very nervous because of being confronted and questioned by three Supreme Court Judges and without even the presence of my lawyer/support person. Also because of my impaired hearing I was at times unable to follow what was being dictated as my statement. I was also not shown what was being recorded and no copy of my statement recorded on 26th and 29th April has been given to me till date."

The complainant walked out and the inquiry proceeded *ex parte*. The inquiry committee could not have compelled her to participate. Yet, by proceeding further and rendering an *ex-parte* finding, its report, while legally defensible, will still remain wanting in public perception. The inquiry could well have paused to consider whether the complainant's concerns could be addressed. It could have also broad-based itself to bring on board an independent *amicus curiae* to stand for the complainant's interest. The independence of the judiciary rests on public trust, and public trust is not maintained by one-sided inquiries.

It matters not that the respondent is the head of the judiciary. He or she must be held to the same standard that is used in all other such cases. The independence of the judiciary and constitutional protections given to judges do not transform into an immunity shield. If the accusation was not of sexual harassment, but of any other grave charge like violence, would a confidential, in-house inquiry have been resorted to? Such an inquiry, if it had proceeded *ex parte* after the complainant's withdrawal, would not have been deemed sufficiently fair. Justice needs not only to be done, but needs to be seen as manifestly done.

The inquiry committee was headed by a person who in all probability will be the next CJI. Two of his immediate predecessors have come under public scrutiny of an unwelcome kind. The court has now chosen a status quoist denial over a serious exploration of the truth, regardless of risk.

How will its actions be seen?

I ask this because of a little incident in my chamber. A one-time junior of mine was arguing before a consumer tribunal. The presiding member was a former senior bureaucrat. At some point in the hearing, the member lost his temper and shouted at the lawyer, "Get out of my court!" It is a matter of pride for me that my pupil responded, "It is my court too." That is the only message that I have for the Supreme Court judges — those involved in the inquiry and those away from it. Members of the Bar, the staff of the court registry and the general public have enough of a stake in an independent judicial system to say, "It is my court too."

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